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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jerome W. Dewald,

Plaintiff

v.

Café Serendipity Holdings, Inc.,

Defendant

Case No.: 2:19-cv-00764-JAD-VCF

**Order (1) Denying Motion for Default
Judgment and (2) Ordering Plaintiff to
Show Cause Why this Case Should not be
Dismissed**

[ECF No. 26]

Pro se plaintiff Jerome W. Dewald brings this action against Café Serendipity Holdings, Inc. (CSH) to collect on a promissory note and for declaratory judgment, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and breach of contract.¹ Dewald alleges that CSH signed a promissory note on January 11, 2015, in which it promised to pay him \$25,000 plus interest within one year.² Dewald further alleges that CSH has failed to pay him, despite his attempts to contact CSH, including via demand letter.³ Dewald seeks \$25,000 in general damages plus costs, accrued interest, and declaratory relief.⁴

Dewald contends that I have subject-matter jurisdiction over this case based on diversity, as he is a citizen of New York and CSH is a citizen of Nevada.⁵ However, it appears that Dewald is seeking damages in an amount far below the \$75,000 threshold required to establish diversity jurisdiction in federal court.⁶ Because Dewald has failed to demonstrate that the

¹ ECF No. 14, 16 (corrected image).

² See ECF No. 16-1.

³ ECF Nos. 16 at 5, 16-2.

⁴ ECF No. 16 at 8.

⁵ *Id.* at 3.

⁶ See 28 U.S.C. § 1332(a)(1).

1 amount-in-controversy exceeds \$75,000, I deny his motion for default judgment and give him 30
2 days to show cause why this case should not be dismissed for lack of subject-matter jurisdiction.

3 **Background**

4 Dewald filed his initial complaint against CSH on May 3, 2019,⁷ and the summons for
5 CSH was returned executed on May 17, 2019.⁸ Dewald then filed an amended complaint on
6 June 3, 2019,⁹ and a second amended complaint on July 5, 2019.¹⁰ The summons for CSH
7 regarding the second amended complaint was returned executed on July 29, 2019.¹¹ Despite
8 service, CSH has failed to plead or otherwise appear. Consequently, Dewald moved for entry of
9 default against an entity called “BioQuest, Corp.,” which Dewald believed was the correct name
10 for the defendant after an alleged company merger.¹² I denied as moot Dewald’s motion for
11 entry of default because he dropped his claims against BioQuest, Corp. when he filed his second
12 amended complaint.¹³ Dewald also moved for entry of default against CSH,¹⁴ and the Clerk of
13 Court entered it on August 4, 2019.¹⁵ Dewald then filed a motion for default judgment,¹⁶ which I
14 denied because he failed to discuss how the seven factors outlined by the Ninth Circuit in *Eitel v.*

17 ⁷ ECF No. 1.

18 ⁸ ECF No. 6.

19 ⁹ ECF No. 10.

20 ¹⁰ ECF No. 16.

21 ¹¹ ECF No. 19.

22 ¹² ECF Nos. 12, 16 at 1–2.

23 ¹³ ECF No. 25.

¹⁴ ECF No. 20.

¹⁵ ECF No. 21.

¹⁶ ECF No. 22.

1 *McCool* justify default judgment against CSH.¹⁷ Dewald then filed this renewed motion for
2 default judgment against CSH, addressing the *Eitel* factors.¹⁸

3 **Discussion**

4 Under 28 U.S.C. § 1332(a)(1), district courts have original jurisdiction over all civil
5 actions between citizens of different states when the amount in controversy exceeds \$75,000.¹⁹
6 “[T]he part[y] asserting diversity jurisdiction . . . bear[s] the burden of establishing by a
7 preponderance of the evidence that the amount in controversy exceeds \$75,000.”²⁰ If he fails to
8 meet that burden and the “federal court concludes that it lacks subject-matter jurisdiction, the
9 court must dismiss the complaint in its entirety.”²¹ Further, pro se litigants’ documents are “to be
10 liberally construed . . . and a pro se complaint, however inartfully pleaded, must be held to less
11 stringent standards than formal pleadings drafted by lawyers.”²²

12 Dewald contends that I can exercise subject-matter jurisdiction over this case based on
13 diversity of citizenship, asserting that he is a citizen of New York and CSH is a citizen of
14 Nevada.²³ But he has failed to demonstrate that the amount in controversy exceeds the statutory
15 minimum of \$75,000. In his operative complaint, Dewald alleges \$25,000 in damages, plus
16 costs, accrued interest, and declaratory relief.²⁴ He failed to provide a calculation of the accrued
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18 ¹⁷ *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986); ECF No. 25.

19 ¹⁸ ECF No. 26.

20 ¹⁹ 28 U.S.C. § 1332(a)(1).

21 ²⁰ *In re Ford Motor Co./Citibank (S. Dakota), N.A.*, 264 F.3d 952, 957 (9th Cir. 2001) (citation omitted).

22 ²¹ *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006).

23 ²² *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citation omitted).

24 ²³ ECF No. 16 at 3.

²⁴ *Id.* at 8.

1 interest in his complaint.²⁵ In his pending motion for default judgment, Dewald provides some
2 calculations of accrued interest, but he still fails to fully explain them.²⁶ The only detailed
3 explanation of Dewald’s calculations appears in his affidavit in support of his motion for default
4 judgment.²⁷ There, Dewald explains that “[t]he amount due in this action is: a. principle [sic]
5 [equal to] \$25,000.00[,], b. interest compounded monthly from 01-11-2015 [over] 55 months
6 @14% per annum[,], [totaling] \$25,141.23[,], c. court costs [equal to] \$400[,], [and] d. cost of
7 service [equal to] \$160,”²⁸ for a total of \$50,701.23, a calculation (that he explains in his
8 affidavit in support of his motion) that he reached by adding the \$25,000 principal amount, his
9 calculation of \$25,141.23 in accrued interest, \$400 in court costs, and \$160 from service of
10 process costs.²⁹ Assuming without deciding that Dewald’s calculations are correct, \$50,701.23
11 falls short of the \$75,000 amount-in-controversy requirement under 28 U.S.C. § 1332(a)(1).³⁰
12 Thus, it appears that this court lacks subject-matter jurisdiction over this case.³¹

13 Because Dewald is proceeding pro se, his pleadings are to be “liberally construed,” as he
14 does not have the benefit of counsel.³² Therefore, I order Dewald to show cause why this case
15 should not be dismissed for lack of subject-matter jurisdiction, and I deny his motion for default
16 judgment without prejudice to Dewald’s ability to re-urge it if and when he demonstrates that
17 this case is appropriate for federal court.

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19 ²⁵ *See id.*

20 ²⁶ ECF No. 26 at 3–4.

21 ²⁷ ECF No. 26-1 at 1.

22 ²⁸ ECF No. 26 at 4.

23 ²⁹ *See id.* at 5.

³⁰ *See* 28 U.S.C. § 1332(a)(1).

³¹ *See id.*

³² *Erickson*, 551 U.S. at 94 (internal quotation marks and citation omitted).

1 **Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that Dewald's motion for default judgment
3 **[ECF No. 26] is DENIED** without prejudice. IT IS FURTHER ORDERED that Dewald **has**
4 **until December 18, 2019, to show cause why this case should not be dismissed for lack of**
5 **subject-matter jurisdiction because the amount in controversy falls well below the**
6 **jurisdictional threshold.** If Dewald does not show cause before this court-ordered deadline,
7 this case will be dismissed without further prior notice.

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9 U.S. District Judge Jennifer A. Dorsey
10 November 18, 2019
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